

105TH CONGRESS
1ST SESSION

H. R. 903

To amend title 28, United States Code, with respect to arbitration in United States district courts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1997

Mr. COBLE (for himself and Mr. GOODLATTE) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, with respect to arbitration in United States district courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alternative Dispute
5 Resolution and Settlement Encouragement Act”.

6 **SEC. 2. ARBITRATION IN DISTRICT COURTS.**

7 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
8 905 of the Judicial Improvements and Access to Justice
9 Act (28 U.S.C. 651 note) is amended in the first sentence

1 by striking “for each of the fiscal years 1994 through
2 1997”.

3 (b) ARBITRATION TO BE ORDERED IN ALL DISTRICT
4 COURTS.—

5 (1) AUTHORIZATION OF ARBITRATION.—Section
6 651(a) of title 28, United States Code, is amended
7 to read as follows:

8 “(a) AUTHORITY.—Each United States district court
9 shall authorize by local rule the use of arbitration in civil
10 actions, including adversary proceedings in bankruptcy, in
11 accordance with this chapter.”.

12 (2) ACTIONS REFERRED TO ARBITRATION.—
13 Section 652(a) of title 28, United States Code, is
14 amended—

15 (A) in paragraph (1)—

16 (i) in the matter preceding subpara-
17 graph (A) by striking “and section 901(c)”
18 and all that follows through “651” and in-
19 serting “a district court”; and

20 (ii) in subparagraph (B) by striking
21 “\$100,000” and inserting “\$150,000”;
22 and

23 (B) in paragraph (2) by striking
24 “\$100,000” and inserting “\$150,000”.

1 (3) CERTIFICATION OF ARBITRATORS.—Section
 2 656(a) of title 28, United States Code, is amended
 3 by striking “listed in section 658”.

4 (4) REMOVAL OF LIMITATION.—Section 658 of
 5 title 28, United States Code, and the item relating
 6 to such section in the table of sections at the begin-
 7 ning of chapter 44 of title 28, United States Code,
 8 are repealed.

9 (c) CONFORMING AMENDMENT.—Section 901 of the
 10 Judicial Improvements and Access to Justice Act (28
 11 U.S.C. 652 note) is amended by striking subsection (c).

12 **SEC. 3. AWARD OF REASONABLE COSTS AND ATTORNEY’S**
 13 **FEES IN FEDERAL CIVIL DIVERSITY LITIGA-**
 14 **TION AFTER AN OFFER OF SETTLEMENT.**

15 Section 1332 of title 28, United States Code, is
 16 amended by adding at the end the following:

17 “(e)(1) In any action over which the court has juris-
 18 diction under this section, any party may, at any time not
 19 less than 10 days before trial, serve upon any adverse
 20 party a written offer to settle a claim or claims for money
 21 or property or to the effect specified in the offer, including
 22 a motion to dismiss all claims, and to enter into a stipula-
 23 tion dismissing the claim or claims or allowing judgment
 24 to be entered according to the terms of the offer. Any such

1 offer, together with proof of service thereof, shall be filed
2 with the clerk of the court.

3 “(2) If the party receiving an offer under paragraph
4 (1) serves written notice on the offeror that the offer is
5 accepted, either party may then file with the clerk of the
6 court the notice of acceptance, together with proof of serv-
7 ice thereof.

8 “(3) The fact that an offer under paragraph (1) is
9 made but not accepted does not preclude a subsequent
10 offer under paragraph (1). Evidence of an offer is not ad-
11 missible for any purpose except in proceedings to enforce
12 a settlement, or to determine costs and expenses under
13 this subsection.

14 “(4) At any time before judgment is entered, the
15 court, upon its own motion or upon the motion of any
16 party, may exempt from this subsection any claim that
17 the court finds presents a question of law or fact that is
18 novel and important and that substantially affects nonpar-
19 ties. If a claim is exempted from this subsection, all offers
20 made by any party under paragraph (1) with respect to
21 that claim shall be void and have no effect.

22 “(5) If all offers made by a party under paragraph
23 (1) with respect to a claim or claims, including any motion
24 to dismiss all claims, are not accepted and the judgment,

1 verdict, or order finally issued (exclusive of costs, ex-
2 penses, and attorneys' fees incurred after judgment or
3 trial) in the action under this section is not more favorable
4 to the offeree with respect to the claim or claims than the
5 last such offer, the offeror may file with the court, within
6 10 days after the final judgment, verdict, or order is is-
7 sued, a petition for payment of costs and expenses, includ-
8 ing attorneys' fees, incurred with respect to the claim or
9 claims from the date the last such offer was made or, if
10 the offeree made an offer under this subsection, from the
11 date the last such offer by the offeree was made.

12 “(6) If the court finds, pursuant to a petition filed
13 under paragraph (5) with respect to a claim or claims,
14 that the judgment, verdict, or order finally obtained is not
15 more favorable to the offeree with respect to the claim or
16 claims than the last offer, the court shall order the offeree
17 to pay the offeror's costs and expenses, including attor-
18 neys' fees, incurred with respect to the claim or claims
19 from the date the last offer was made or, if the offeree
20 made an offer under this subsection, from the date the
21 last such offer by the offeree was made, unless the court
22 finds that requiring the payment of such costs and ex-
23 penses would be manifestly unjust.

24 “(7) Attorney's fees under paragraph (6) shall be a
25 reasonable attorney's fee attributable to the claim or

1 claims involved, calculated on the basis of an hourly rate
 2 which may not exceed that which the court considers ac-
 3 ceptable in the community in which the attorney practices
 4 law, taking into account the attorney's qualifications and
 5 experience and the complexity of the case, except that the
 6 attorney's fees under paragraph (6) may not exceed—

7 “(A) the actual cost incurred by the offeree for
 8 an attorney's fee payable to an attorney for services
 9 in connection with the claim or claims; or

10 “(B) if no such cost was incurred by the offeree
 11 due to a contingency fee agreement, a reasonable
 12 cost that would have been incurred by the offeree for
 13 an attorney's noncontingent fee payable to an attor-
 14 ney for services in connection with the claim or
 15 claims.

16 “(8) This subsection does not apply to any claim
 17 seeking an equitable remedy.”.

18 **SEC. 4. RELIABILITY OF EVIDENCE.**

19 Rule 702 of the Federal Rules of Evidence (28 U.S.C.
 20 App.) is amended—

21 (1) by inserting “(a) IN GENERAL.—” before

22 “If”, and

23 (2) by adding at the end the following:

1 “(b) ADEQUATE BASIS FOR OPINION.—Testimony in
 2 the form of an opinion by a witness that is based on sci-
 3 entific knowledge shall be inadmissible in evidence unless
 4 the court determines that such opinion—

5 “(1) is scientifically valid and reliable;

6 “(2) has a valid scientific connection to the fact
 7 it is offered to prove; and

8 “(3) is sufficiently reliable so that the probative
 9 value of such evidence outweighs the dangers speci-
 10 fied in rule 403.

11 “(c) DISQUALIFICATION.—Testimony by a witness
 12 who is qualified as described in subdivision (a) is inadmis-
 13 sible in evidence if the witness is entitled to receive any
 14 compensation contingent on the legal disposition of any
 15 claim with respect to which the testimony is offered.

16 “(d) SCOPE.—Subdivision (b) does not apply to
 17 criminal proceedings.”.

18 **SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

19 (a) SECTION 2.—The amendments made by section
 20 2 shall take effect on the date of the enactment of this
 21 Act.

22 (b) SECTIONS 3 AND 4.—

23 (1) IN GENERAL.—Subject to paragraph (2),
 24 the amendments made by sections 3 and 4 shall take
 25 effect on the first day of the first month beginning

1 more than 180 days after the date of the enactment
2 of this Act.

3 (2) APPLICATION OF AMENDMENTS.—(A) The
4 amendment made by section 3 shall apply only with
5 respect to civil actions commenced after the effective
6 date set forth in paragraph (1).

7 (B) The amendments made by section 4 shall
8 apply only with respect to cases in which a trial be-
9 gins after the effective date set forth in paragraph
10 (1).

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